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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,567	12/05/2001	Matthew R. Hyre	5352-05	7992
7590 04/21/2004				
Emhart Glass Manufacturing Inc. 89 Phoenix Avenue P.O. Box 1229 Enfield, CT 06082			EXAMINER LOPEZ, CARLOS N	
			ART UNIT 1731	PAPER NUMBER

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/005,567

Applicant(s)

HYRE ET AL.

Examiner

Carlos Lopez

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "the cooling requirements" lacks antecedent basis.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez-Wong et al US 5,807,419 ('419) in view of Crowder ("Electric Drives and Their Controls", Richard M. Oxford Science Publications, 1995, Pages 188-191). Rodriguez-Wong discloses a glass-forming machine in order to shape a glass parison in a blowing mold (Abstract). The claimed "a blow head assembly" is '419 element 50. The claimed "support means for supporting said blow head assembly" is deemed as lock 52 of Rodriguez-Wong disclosure.

The "first displacement means for displacing said support means to displace said blow head assembly between a remote up position and an advanced down position" is shown by '419 as piston element 56. The claimed blow tube displaceable between an up and down position is shown by Rodriguez-Wong as element 30. The second displacement means for displacing said

Art Unit: 1731

blow tube from the up position down to the down position is deemed as '419's cylinder piston assembly 20. Rodriguez-Wong is silent suggesting the displacement means having a profiled actuator. However, in pages 188-189, Crowder teaches "In drive systems, there have been an almost complete shift towards the use of digital rather than analog systems; this results in systems with a number of significant benefits." Among the benefits of using a digital drive is "the use of low-cost microprocessors", "digital control provides a highly flexible system", and "due to digital nature of the controller there will be no component variation". In view that digital drives systems are preferred over analog systems such as cylinder piston assembly disclosed by Rodriguez-Wong, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have chosen a digital drive (which includes a servomotor) as the means for displacing the blow tube because it provides a low cost, a highly flexible system, and there is no component variation as taught by Crowder. Additionally, cylinder piston assembly 20 of Rodriguez-Wong is deemed as profiled since the blow tube is only actuated at specific times of the blow molding operation.

Additionally, the "off" and "on" positions are deemed to be when the displacement means is on or off the blow mold.

In regards to claim 3, the blow tube is displaced in and out of the mold in order to cool the mold.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

Art Unit: 1731

F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of copending Application No. 10/006603. Claims 1-5 of Application No. 10/006603 recite ~~the~~ the claimed blow head assembly, support means for supporting said blow head assembly, first displacement means, a blow tube, second displacement means having a profiled actuator. As for claim 2, the recited profile actuator of Application No. 10/006,603 is a servomotor, see Application No. 10/006603 page 5 lines 10-11. Instant claim 3 corresponds to claim 2 of Application No. 10/006,603. Additionally, instant claims 4, 5, 6 correspond to the claims 3, 4, and 5 of Application No. 10/006603 respectively.

This is a provisional obviousness-type double patenting rejection.

### ***Response to Arguments***

Applicant's arguments filed 1/23/04 have been fully considered but they are not persuasive.

Applicant argues that the Rodriguez -Wong patent fails to "teach the reciprocation of the blow interior of formed bottle tube during the time when being internally cooled. Every reference teaches the same advance the blow tube down position and leave the formed bottle is being cooled. The references uniformly show that

Art Unit: 1731

men skilled in the art believed that cooling air should enter the formed bottle at the bottom location for the entire duration of thing there while cooling.” In summary applicant’s arguments are mainly directed to distinguishing the claimed blow head mechanism through functional limitations by arguing that the prior art does not displace the blow tube a plurality of times while during the “on” position as opposed the prior art which only displaces the blow tube once. In view that the claims are directed to an apparatus, which must be structurally distinguished from the prior art, it is deemed that the claimed invention reads on the teachings of Rodriquez –Wong and Crowder. While it is generally agreed that the instant claimed apparatus functions in a different manner than the prior art, the instant claims do not recite an apparatus structurally distinguishable from the teachings of the prior art, since applicant’s argued distinction only hinges on its function rather than structure, as required.

Furthermore, the apparatus derived from the teachings of Rodriquez –Wong and Crowder. has the means that are capable of moving the blow tube a plurality of times since it is clearly shown that it can move the blow tube at least once. As noted in MPEP 2183: “The limitation in a means-plus-function claim is the overall structure corresponding to the claimed function.” Which as clearly noted above that “second displacement means for displacing said blow tube from the up position down to the down position and then back up to the up position a plurality of times during the time that the blow head assembly is at the “on” position” structurally corresponds to a profiled actuator, digital servo motor as noted by the teachings Crowder.

Art Unit: 1731


**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References B-L have been cited in PTO-892 to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is (703) 605-1174. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (703) 308-1164. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
STEVEN P. GRIFFIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

C.L